



May 10, 2001

Mr. James G. Nolan
Supervising Attorney
Legal Department - Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2001-1926

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146472.

The Texas Workforce Commission (the "commission") received a request for a list containing the names, addresses and telephone numbers of students involved with the "teach-out" of the Computer Learning Center campus in the Dallas/Fort Worth area (the "CLC"). You state that you do not maintain a list containing only the requested information. However, you have submitted to us lists of the student population of CLC which contain the requested information, as well as non-responsive information.¹ You claim that the requested information is excepted from disclosure under the Family Educational and Privacy Rights Act, ("FERPA"), 20 U.S.C. § 1232g and sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

¹It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable Department of Education program. *See id.* § 1232g(a)(3). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *See id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978).

An educational institution or agency may release "directory information" to the public if the education institution complies with section 1232g(a)(5)(B) of title 20 of the United States Code. "Directory information" includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. *See* 20 U.S.C. § 1232g(a)(5)(A). Section 1232g(a)(5)(B) provides that

[a]ny educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

20 U.S.C. § 1232g(a)(5)(B). In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, since you submitted the information for our review, we will consider whether any of it is protected by FERPA.

Pursuant to section 552.303 of the Government Code, our office requested that the commission send us documentation showing 1) that CLC receives funding under Title IV of the Higher Education Act or applicable state funding, and 2) the specific provision(s) of

Chapter 132 of the Texas Education Code which authorize(s) the commission to obtain a proprietary school's student records. Based on the additional information submitted by the commission, we conclude that CLC is an "educational agency or institution" within the meaning of FERPA and that the commission has appropriate regulatory authority pursuant to Chapter 132 of the Texas Education Code to obtain student records from the CLC. *See generally* Educ. Code § 132.151 (stating that upon discontinuance of operation, proprietary school must make accurate records available to commission). Furthermore, it does not appear that any of the requested information has been designated as "directory information." Therefore, we conclude that population lists are "education records" that must be withheld from disclosure under FERPA. Because we are able to make a determination under FERPA, we need not address your additional arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

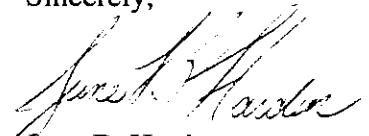
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 146472

Encl. Submitted documents

cc: Mr. Kevin Goodgion
International Business College
4630 50th Street, Suite 100
Lubbock, Texas 79414-3509
(w/o enclosures)